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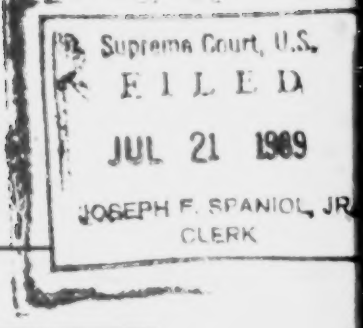

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

RUTH E. PREVENSLIK,
Individually and as Trustee of the
Felix and Olga Davis Trust

Petitioner,

vs.

ELMER ROSSKO, HENRY G. BEAMER, ESQ.,
METZ, COOK, HANNA, WELSH, BLUESTONE
AND BEAMER,
J. WARREN WATSON, Individually
and in capacity as Orphans' Court Judge
of Allegheny County,
MELLON BANK, N.A.,
PAUL R. ZAVARELLA, Individually
and in capacity as Orphans' Court Judge
of Allegheny County,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RUTH E. PREVENSLIK, IPP
714 SOUTH SEVENTH STREET
YOUNGWOOD, PENNSYLVANIA 15697
(412) 925-9914

QUESTIONS PRESENTED

1. WHAT is the national impact of the elderly being robbed of their homes and estates: WHEN state probate court judges under the color of state law *allow the court to be used as a RICO enterprise* wherein unscrupulous judges, lawyers, banks and designing persons are the RICO participants, and WHEN federal judges subsequently *deny the elderly and family the right of redress for estate damages* caused by the RICO enterprise?

2. Whether the Third Circuit erred in asserting that state probate judges have absolute judicial immunity under RICO, 18 U.S.C. §§ 1961 et seq., and thereby precludes redress for damages to estates caused by UNLAWFUL judicial acts, *including the retrospective invalidation of deeds and trusts*?

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I. The Decision Below is of NATIONAL Significance that requires the authoritative voice of the U.S. Supreme Court, because a large segment of U.S. population, namely the ELDERLY and their families in America are or will be unconstitutionally deprived of life, liberty and/or property in state probate court proceedings WHEN these courts are used as ongoing RICO enterprises by unscrupulous lawyers, judges, banks and other designing persons.

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II. The Decision Below Contradicts ALL Precedent set by the U.S. Supreme Court, Courts of Appeal, and Federal District Courts that JUDICIAL IMMUNITY DOES NOT EXIST UNDER RICO, 18 U.S.C. §§ 1961 et seq., and the state court itself may be the RICO enterprise. 32

III. The Decision Below Contradicts ALL Precedent set by the U.S. Supreme Court, Courts of Appeal, and Federal District Courts that DENY the Right of Trial by Jury for REDRESS to recover damages to property as guaranteed by the Seventh Amendment and under RICO 18 U.S.C. § 1964(c). 38

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NO. _____

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1988

RUTH E. PREVENSLIK,
Petitioner,

vs.

ELMER ROSSKO et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

To the honorable, the Chief Justice and Associate Justices of the United States Supreme Court:

Ruth Davis Prevenslik, Petitioner herein, respectfully requests that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Third Circuit entered May 9, 1989 and March 22, 1989.

OPINIONS BELOW

The denials of Application and Renewal of Application for Stay of Mandate of the Third Circuit Court of Appeals by Supreme Court Justices Kennedy and Brennan appear in the Appendix to this petition.

No opinions were issued by the United States Court of Appeals for the Third Circuit. The interlocutory judgment issued March 22, 1989 and the final judgment issued on May 9, 1989 appear in the Appendix. The Memorandum Order issued December 19, 1988 by U.S. District Court Judge Alan N. Bloch which adopted the Magistrate's Report and Recommendation as the Opinion of the Court dated November 30, 1988, and the interlocutory order issued July 23, 1987 by Judge Bloch denying my Motion to Compel Discovery appear in the Appendix.

JURISDICTION

The final judgment for the United States Court of Appeal for the Third Circuit was entered on May 9, 1989. This petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked pursuant to Article III of the U.S. Constitution and under 28 U.S.C. 1254 (1) effective June, 1988.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution,

Seventh Amendment:

> "In suits at common law, where the value in controversy shall exceed $20.00 the right of trial by jury shall be preserved, ..."

STATUTORY PROVISIONS INVOLVED

United States Law,

18 U.S.C. §§ 1961 et seq.:

> (1) "racketeering activity" means (A) any act or threat involving murder, kidnaping ..., bribery, extortion ...; (B) any act which is indictable under any of the following provisions of title 18, United States Code: ... , section 1341 (relating to mail fraud), section 1343 (relating to wire fraud)..."

United States Law,

18 U.S.C. § 1964(c):

> Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including reasonable attorney fees.

STATEMENT OF THE CASE

Prologue

I, Ruth Davis Prevenslik, am the natural daughter of Felix and Olga Davis. On September 17, 1982, my parents, Felix and Olga Davis executed a Deed transferring to me, their only daughter, their home located at 2081 Kendon Drive East, Wilkinsburg, PA as a gift. In a like manner, my parents transferred cash funds equivalent to the fair market value of their home to my brother, their only son, Raymond M. Davis.

On December 31, 1982, my parents, Felix and Olga Davis, sold their half interest in the Better Seed Company located at 192 Sandy Creek Road, Verona, PA for a total consideration of $60,000 to their half business partner of 25 years, Elmer Rossko. Rossko, unmarried, is also the brother of Olga Davis.

On the same day as the sale of the Better Seed Company, Felix and Olga Davis executed an agreement naming me as Trustee and placed $50,000 received from the sale into the Trust. In the event of my parents' death, the beneficiaries of said Trust were the grandchildren of Felix and Olga Davis, and ultimately Children's Hospital of Pittsburgh, PA.

All of these transactions were executed in late 1982 by Pittsburgh attorneys Frank E. Yourick Jr., Alfred W. Babb; and G. Donald Gerlach of Reed Smith Shaw & McClay.

State Court Proceedings

In October, 1983, about one year later, RICO defendant Elmer Rossko petitioned the Orphans' Court to have my parents, his ex-business partners, declared incompetent so as to get back the $60,000 he paid them to buy

their half of the Better Seed Company by getting RICO defendant Mellon Bank named as trustee of my parents' estate. With RICO defendant Rossko also appointed guardian of the person of my mother, Olga Davis, Rossko, would have control over the money he paid my parents using RICO defendant Mellon Bank as the "conduit".

Even before the incompetency petition was brought by RICO defendants Rossko and attorney Beamer, RICO defendants Judges Watson and Zavarella knew full well that a retrospective invalidation of the DEED and TRUST was unlawful. Further, the only LEGAL claim----that RICO defendant Mellon Bank as Guardian would have on my parents' estate at the time of any prospective incompetency ruling would take effect----was their social security checks.

Hence, Judge Watson, placed "legal pressure" on me to voluntarily turn the Trust over to RICO defendant Mellon Bank using my parents' competency as a bargaining chip -- On March 30, 1984 RICO defendant Judge Watson using his judicial power threatened me by mail and wire (18 U.S.C. §§ 1341, 1343) through W. Reid Lowe, of Meyer, Unkovic & Scott:

> "He (Judge Watson) would make a finding of competency for both your father and mother;...you would resign as Trustee and he would make an order appointing Mellon Bank .... as Successor Trustee for the Trust ..."

and,

> " ... the risks involved in refusing to accept Judge Watson's proposal, the principal ones being that there could be a finding of incompetency for either or both of your parents; there could be a finding that the transfer of the house into your name was an invalid transfer and/or that the establishment of the Trust and the transfer of funds to the Trustee was invalid."

Since I refused to turn the DEED and TRUST over to RICO defendant Mellon Bank, in December 1984, over <u>two</u> years after the 1982 DEED, SALE, and TRUST transactions were executed, RICO defendant Judge Watson followed through with his threat and declared both my parents incompetent. In doing so, the Orphans' Court appointed RICO defendant Rossko, a 71 year old man as Guardian of the person of my 73 year old mother, Olga Davis. I was appointed Guardian of the person of my father, Felix Davis, and Mellon Bank was appointed Guardian of the Felix and Olga Davis estate.

On April 1, 1986, <u>after two more years</u> of litigation brought by RICO defendants Rossko, Beamer, and Mellon Bank, RICO defendant Judge Watson--retrospectively, in violation of Pa. law of estates & trusts -- declared both the

Deed transfer and the Trust agreement INVALID, but the Sale of the Better Seed Co. to RICO defendant Rossko was declared VALID even though the Sale occurred on the very same day, December 31, 1982, as the Trust! INCREDIBLE BUT TRUE !!

No jury was present to witness any of the corrupt actions on the part of all the RICO defendants. Thereafter my father, Felix Davis, died and RICO defendant Rossko in complicity with the RICO enterprise of the Orphans' Court arrogantly moved into my house, the 2081 Kendon Drive property, allegedly taking care of my mother, Olga Davis.

All the frivolous litigation, and all the threats (18 U.S.C. §§ 1341,1343) since 1983 by all the RICO defendants cost my parents' estate over $27,000 in legal fees by creating 'work' for lawyers and judges under the color of law.

When the Orphans' Court is used as the RICO enterprise, the ultimate threat -- beyond LEGAL abuse in extorting property and trust funds from the elderly and families -- is incarceration. RICO defendant Judges easily find the unwilling victims in CIVIL contempt of court if the victims refuse to obey the unlawful "court orders".

On March 24, 1987, after I filed my RICO complaint, Judge Watson found me in CIVIL CONTEMPT OF COURT for refusing to turn DEED and TRUST over to RICO defendant Mellon Bank and to pay all costs -- after the RICO enterprise already stole $27,000 -- What a Racket!!

Federal District Court Proceedings

In February 1987, in redress for damages of $27,000 to my parent's estate, I filed a RICO complaint in U.S. District Court alleging the Orphans' Court is a

RICO enterprise wherein Mellon Bank, attorney Beamer & law firm, Elmer Rossko, and Judges Watson and Zavarella were named as RICO defendants who benefited from the plunder of the estate of my parents, Felix and Olga Davis. The grounds for the complaint were that my parents' suffered physical, mental and financial harm and LEGAL abuse from the 'forced' incompetency litigation caused by all the RICO defendants.

The PHYSICAL abuse of the elderly is gaining national attention. However, when LEGAL abuse also occurs through a corrupt judicial system, a bad situation is made even worse for the elderly. It is the right of victims to redress for damages caused by LEGAL abuse from a RICO enterprise that needs to be supported by the authoritative voice of the Supreme Court.

In the District Court, on July 23, 1987, Judge Alan Bloch denied my Motion Compelling Discovery and stayed all Discovery. See Appendix (App. 30). Contrary to wide precedent in RICO case law, Judge Bloch dismissed my RICO case without Discovery on December 19, 1989 and adopted Magistrate Lancaster's Report and Recommendation as the opinion of the court. See Appendix (App. 7,9).

Third Circuit Court of Appeals

On December 21, 1989, I noticed my appeal to the Third Circuit. On March 22, 1989 the Third Circuit denied my Motion for Emergency Injunctive Relief and Recusal. See Appendix (App. 6).

On May 9, 1989, the Third Circuit affirmed the judgement of the District Court and taxed costs in favor of RICO defendants Mellon Bank and Rossko. See Appendix (App. 3).

Both Third Circuit judgments show that the RICO enterprise continues to flourish by extortion and reaches far beyond the Allegheny County Orphans' Court. This is exemplified by Judge Sloviter's holdings in Allegheny County bonds and securities and Judge Mansmann's financial holdings in RICO defendant Mellon Bank; not to mention a spouse, associates and friends in the Pittsburgh legal community.

Even while my RICO case was under appeal to the Third Circuit, RICO defendant Mellon Bank arrogantly petitioned the Orphans' Court to <u>resign</u> as Guardian of the Estate of Felix and Olga Davis and to distribute my house for $1.00 to RICO defendants Rossko and Beamer. Apparently, RICO defendants knew that the Third Circuit would not stop the plunder my of my parents estate.

Supreme Court Proceedings

On Friday, May 26, 1989 I filed an Application addressed to Justice Brennan To Stay the Mandate of the Third Circuit directing me to pay even more money to RICO Defendants Rossko, Beamer and Mellon Bank. After a 4 hour wait in the Supreme Court Clerk's office, the Application was docketed at A-944. On Monday, Memorial Day, May 29, 1989 Justice Brennan denied the Application (App. 2).

On June 19, 1989 my Renewal of Application to Justice Kennedy was also denied (App. 1).

Even while the Supreme Court was deliberating on my Applications for Stay of Mandate, the RICO enterprise was hard at work. On July 11, 1989, an Orphans' Court order was issued per curiam signed by Judge O'Malley, that in effect ARROGANTLY states:

> RICO defendant Rossko is authorized to purchase MY HOUSE at a price to be determined by the average value of three contemporaneous independent appraisals of the property and give the proceeds to RICO defendant Mellon Bank (who suddenly wants to remain as Guardian of the Felix and Olga Davis estate contrary to Mellon Bank's Petition in Feb. 1989 to resign as Guardian).

With renewed confidence in the American Judicial system, I now petition all the Justices to grant a writ of certiorari.

Epilogue

RICO defendants Rossko, Mellon Bank, attorney Beamer, Judge Watson and all other lawyers and judges who benefited from the litigation to the detriment of the estate of Felix and Olga Davis are representative of the parasites living off the elderly. This LEGAL abuse of the elderly compounds an already

serious problem of PHYSICAL abuse across America.

The fact remains that as a result of the $27,000 stolen by the RICO enterprise, Felix Davis died a pauper in 1986. The very Court System that is supposed to protect the elderly from abuse is being used as a RICO enterprise to rob the elderly of their liberty and property and now wants to steal my house.

In a debtor nation losing its economic edge in the world and with its businesses and banks collapsing daily, the elderly are big business on the NATIONAL level. The elderly, having lifelong savings and homes of modest value, have become the targets of the RICO enterprise, called probate court. Unless the Supreme Court takes a stand against the corruption in lower courts, it has legitimatized the "mugging" of the

elderly and their families in the probate courts across America.

Summary

Petitioner maintains the Court of Appeals erred in several respects, the errors are fatal to all the elderly and their families. The issues presented in the Questions are of NATIONAL importance and are worthy of review by the Supreme Court.

1. The NATIONAL impact of the Court error -- in denying my right of redress for damages under RICO and not recognizing that the elderly are robbed of their estates WHEN the probate court is used as a RICO enterprise -- is the loss of confidence in the American judicial system and the Bill of Rights of the Constitution. Except for the use of the courts instead of a gun, America becomes no different than any other

totalitarian, socialistic or communistic country run by lawyers, judges, bankers, and the rich and powerful; the pharisees and parasites -- without fear of punishment or exposure in a public trial -- living off the estates of the elderly.

A Sad day for America.

2. Petitioner believes the Third Circuit erred, and if the Supreme Court does not hear this case and settle the question, probate judges influenced by the RICH and POWERFUL will under color of state law extort property and money from the estates of the elderly and their family and get away with it -- without fear of punishment or liability for damages -- relying on judicial immunity.

A Sad day for America.

REASONS FOR GRANTING THE WRIT

I. **The Decision Below is of NATIONAL Significance that requires the authoritative voice of the U.S. Supreme Court because a large segment of U.S. population, namely the ELDERLY and their families in America are or will be unconstitutionally deprived of life, liberty and/or property in state probate court proceedings <u>WHEN</u> these courts are used as ongoing RICO enterprises by unscrupulous lawyers, judges, banks and other designing persons.**

Specific RICO cases wherein the elderly and their families are victimized through a RICO enterprise of a probate court have been brought to the attention of District Courts, but not to the U.S. Supreme Court.

The questions of the elderly persons legal right to be free from the PLUNDER of their life savings and homes through probate courts used as a RICO enterprise by judges, bankers and lawyers, and the

legal right to be free from incarceration in jails, nursing homes, psychiatric hospitals, and the legal right for redress under RICO are in need of the Supreme Court's AUTHORITATIVE VOICE.

In RICO cases arising from probate or incompetency proceedings, there are many victims, many injuries and a multitude of long term schemes with several active perpetrators having continuity and relationship in a pattern of racketeering using the probate courts in a RICO enterprise.

Even government agencies that purport to help the elderly can be a RICO Participant as in some cases the *control* of large amounts of estate monies is acquired by religious or secular institutions and private nursing homes through incompetency proceedings.

When the elderly and family object to the abuse from the state court proceedings, the Judge issues a CIVIL Contempt of Court charge, and puts the objector in jail without a jury trial. What greater threat can any RICO racket have than JAIL for CIVIL CONTEMPT OF COURT to extort money and property from a victim - to rob without a gun !!

In the RICO enterprise the Judges have the POWER (without a jury finding guilt) to issue CIVIL Contempt of Court Charges as Judge Warren Watson did to me since I refused to turn money and property over to RICO defendants Rossko and Mellon Bank.

In Gunther v. Dinger, 547 F.Supp. 25 (S.D.N.Y. 1982), a case almost parallel to the instant case, a RICO complaint for damages to an estate in New York State in probate proceedings WAS NOT DISMISSED as

frivolous; as Judge Bloch ruled in my RICO case against the Allegheny County Orphans' Court in Pennsylvania.

> "In a civil suit arising out of administration of a decedent's estate, the District Court, Conner, J., on motion to dismiss complaint, held that: (1) court had jurisdiction over claims arising under Racketeer Influenced and Corrupt Organizations Act and federal securities laws; 2) it was not necessary that plaintiff first exhaust state judicial remedies or that action be dismissed or stayed pending completion of state probate proceedings; (3) failure to plead defendants' involvement in organized crime was not fatal to her RICO claim; and (4) decedent's estate was an "enterprise."

Similarly, Maxwell v. Southwest Nat. Bank, Wichita, Kansas; et al., 593 F.Supp. 250 (D.C. Kan. 1984) sufficiently alleged a claim under RICO wherein an ongoing enterprise consisting of a bank,

bank officers, lawyers, and named and unnamed others engaged in a pattern of racketeering activities, including acts indictable under 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud) statutes, in an unlawful scheme whereby the defendants would identify and target elderly rich for the purpose of defrauding them, their heirs, and their legatees out of their estates. Motion to Dismiss denied as complaint stated claim under civil RICO. It was also noted in Maxwell that under RICO:

> "The breadth of the civil remedy is the subject of greater dispute, and a split among the United States Courts of Appeal has developed. Neither the United States Supreme Court nor the Tenth Circuit Court of Appeals has considered the matter."

The RICO defendants in the case at bar continue the enterprise 6 years later in a relentless manner. In February 1989,

while my case was under appeal at the Third Circuit, RICO defendant Mellon Bank through RICO defendant attorney Henry Beamer petitioned the Orphans' Court RICO enterprise to "distribute" my house for $1 (ONE DOLLAR) to RICO defendant Elmer Rossko.

For some strange reason, on July 11, 1989, RICO defendant Mellon Bank no longer wants to distribute MY HOUSE for $1, but instead obtained a court order from the RICO enterprise that AUTHORIZES the sale of MY HOUSE to RICO defendant Rossko at a price yet to be determined with the proceeds given to RICO defendant Mellon Bank. The RICO enterprise is now fraudulently "selling" property it does not own! What a Racket !!!

Beyond the case at bar, the magnitude of this pattern of RICO activity is significant and needs the

AUTHORITATIVE VOICE of the U.S. Supreme Court. However, many abused elderly are unable to bring their case to the Supreme Court as in the case of William A. Gallagher, a 77 year old pauper, who fought to stop the Allegheny County Orphans' Court RICO enterprise, the unscrupulous Allegheny County lawyers and RICO defendant Mellon Bank from taking his home of 77 years and his freedom away from him.

William A. Gallagher appealed to the Superior Court sitting at Pittsburgh in No. 578 of 1988 wherein he challenged the Orphans' Court decision that appointed a Roman Catholic Nun, Sister Dorothy Gourley, of Ursuline Center Inc., as legal guardian of his natural sister, Marie Gallagher, a Methodist; and gave Sister Gourley the power to sell the home Bill and Marie lived in for 77 years.

In his Pro Se appeal, William A. Gallagher raised the following Constitutional issues:

1. *Due Process - Sister Dorothy Gourley took $3063.90 from a JOINT bank account of Bill and Marie Gallagher on January 15, 1988. Judge Ross of the Orphans' Court gave Sister Dorothy Gourley the power to act as guardian of Marie Gallagher at a hearing held on January 8, 1988, but did not notify Bill Gallagher of said hearing until 7 days later on January 15, 1988.*

2. *Right of Jury Trial - Orphans' Court procedure 20 Pa. C.S.A. 777(d) states: "A person desiring a trial by jury shall make demands therefore in writing at least 10 days prior to the initial hearing". Since William A. Gallagher was not notified of the initial hearing until 7 days after it occurred, it was impossible to ask for a jury trial 10 days prior to the initial hearing.*

3. *Separation of Church and State - Court appointment of Roman Catholic nuns as legal guardians, and the payment of said Roman Catholic nuns by Allegheny County Area Agency on Aging for guardianship work, and the Allegheny County legal representation of said Roman Catholic nuns in Orphans' Court proceedings whose guardianship actions are being challenged is in violation of Separation of Church and State.*

On October 13, 1988, the Pa. Superior Court affirmed the Orphans' Court decision and a distraught William A. Gallagher signed himself into St. Clair Hospital for chest pains only to find himself SENTENCED (committed involuntarily) by Judge Stephen Israel, an Orphans' Court lawyer at a hearing at St. Clair Hospital to WOODVILLE STATE PSYCHIATRIC HOSPITAL for 45 days.

At this hearing, Judge Stephen Israel stated "there's no constitution here" and ignored Bill's request to go home or be placed in a personal care home until he would be able to go home.

At the time of this petition, Marie Gallagher is deceased and the Gallagher home has been sold with RICO defendant Mellon Bank as William A. Gallagher's trustee. Bill has lost all to the RICO enterprise and its participants.

Other Orphans' Court litigants have filed in District Court of Western Pennsylvania. Notable in this regard is Federal Case 88-3724 which arises from Orphans' Court Case No. 3391 of 1984 concerning the estate of Lyn W. Birmingham and RICO defendant Judge Watson.

In effect, RICO defendant Judge Watson this time influenced by Union National Bank (UNB) acted in an Orphans' Court capacity in the probate of a will of Lyn W. Birmingham, mother of Lewis Birmingham. This case is MOCKERY of JUSTICE. Attorney Harvey E. Robbins got the elderly Mrs. Birmingham to change her will appointing him trustee of her estate a few months before she died thereby controlling the very same property that belonged to Lewis Birmingham by intestate rights. Judge Watson by the threat of

contempt of court coerced Lewis Birmingham into BUYING BACK the property for $323,000 that was already his!

What a RACKET !!!

On March 7, 1989, Lew Birmingham stated:

> *"I really am sorry that your lawsuit was thrown out. My own experience with U. S. District Court was hardly any better. Judge Diamond refused to let me even mention the illegal freeze on my money and he refused to stay the sale of the property although I ended up buying it at a greatly inflated price due to the machination of the shysters for UNB involved. When my action was due for a full trial in October 1988, Diamond abruptly dismissed the whole case a month before. I appealed to the Third Circuit, but had to drop the appeal for lack of funds....I will draw up an affidavit about the conduct of Judge Watson in my case if you like. That should help give the true picture of Allegheny Co. jurisprudence to the Third Circuit, if they care. I doubt if any case involving a judge will ever get a fair hearing before another judge unless there is massive publicity and inflamed public sentiment."*

Should the instant case not be heard, it is likely that another similar RICO probate cases will reach the Supreme Court in the not too distant future where the right to redress under RICO is denied, and hopefully the Supreme Court will listen.

Time will not bury the questions of law surrounding the RICO enterprise of probate courts even though time will bury the litigants.

This Court should grant the writ of certiorari to review the judgment below because the RICO case is of NATIONAL significance affecting all the elderly and their families.

II. The Decision Below Contradicts ALL Precedent set by the U.S. Supreme Court, Courts of Appeal, and Federal District Courts that JUDICIAL IMMUNITY DOES NOT EXIST UNDER RICO, 18 U.S.C. §§ 1961 et seq., and the state court itself may be the RICO enterprise.

This case provides the Supreme Court with an opportunity to follow other Supreme Court decisions and establish a published case precedent that absolute judicial immunity for judges does not apply in RICO action and that the state probate court itself is often the RICO enterprise.

In the Third Circuit affirmation of the District Court's dismissal of my RICO complaint (App. 4), it was held:

> "Judges Watson and Zavarella are entitled to absolute immunity from damages under § 1983."

Thereby the Third Circuit knowing full well that judges are not immune

under RICO, acted to fraudulently deny not only myself the right of redress for damages, but also by this precedent, have denied the right of redress for any other victim of corrupt probate courts across America.

Since the Third Circuit obviously knows the difference between statutes 42 U.S.C. § 1983 and 18 U.S.C. §§ 1961 et seq., it must therefore be concluded that the RICO enterprise now includes the Third Circuit as RICO participants.

Under RICO 18 U.S.C. §§ 1961 et seq., to date, all Circuits of Court of Appeals and the U.S. Supreme Court have upheld that judges do not have absolute judicial immunity from prosecution and conviction. In the very same Allegheny County as the instant case, United States v. Herman, 589 F.2d 1191 (3rd Cir. 1978) cert. denied, 441 U.S. 913, 99 S.Ct.

2014, 60 L.Ed.2d 386 (1979) State Court Magistrates were convicted of violating RICO. In United States v. Vignola, 464 F.Supp. 1091 (E.D.Pa. 1979) aff'd without op., 605 F.2d 1199 (3rd Cir. 1979) cert. denied, 444 U.S. 1072, 62 L.Ed.2d 753, 100 S.Ct. 1015 (1980), the U.S. Supreme Court upheld the Third Circuit decision which affirmed the District Court's conviction of President Judge of Philadelphia traffic court, Louis Vignola, on RICO charges and the Philadelphia traffic court was held to be an "enterprise". The District Court states clearly:

> "The judiciary is as vulnerable to the evils of corruption as any other entity, public or private."

thereby confirming Judicial Immunity in RICO does not exist. The VERY SAME Judge Sloviter of the Third Circuit who denied

my Motion for Emergency Injunctive Relief in stating the opinion of the court in United States v. Bacheler, 611 F.2d 443 (3rd Cir. 1979) held the Philadelphia Traffic Court was the enterprise within the meaning of U.S.C. § 1961(4) and the conviction of public employees of the Philadelphia Traffic Court was affirmed.

In the Fifth Circuit, judicial immunity does not exist in RICO convictions. United States v. Sutherland, 656 F.2d 1181 (5th Cir. 1981) affirmed, (Judge Sutherland, Municipal Court of the City of El Paso, Texas). In United States v. Stratton, 649 F.2d 1066 (5th Cir. 1981) Judge Smith was indicted for "converting his office into a nest of bribery and corruption". In the Sixth Circuit United States v. Callanan, 810 F.2d 544, (6th Cir. 1987) cert. denied, 98 L.Ed.2d 67, 108 S.Ct. 107, Judicial

Immunity did not exist for Judge Callanan Sr. See also United States v. Qaoud, 777 F.2d 1105 (6th Cir. 1985) cert. denied, 475 U.S. 1098, 89 L.Ed.2d 899, 106 S.Ct. 1499.

In the Seventh Circuit, United States v. LeFevour, 798 F.2d 977 (7th Cir. 1896) affirmed, Judge LeFevour was a state court judge in Chicago and principal figure in the "Greylord" scandal. See also United States v. Devine, 787 F.2d 1086 (7th Cir. 1986) and United States v. Murphy, 768 F.2d 1518 (7th Cir. 1985) affirmed, wherein Judge Murphy was an Associate Judge of the Circuit Court of Cook County, said Circuit Court was the enterprise.

Obviously Judges throughout the United States have been convicted under RICO. In my case, RICO defendant Judges Watson and Zavarella acted UNLAWFULLY in

their retrospective invalidation of my DEED and TRUST, and attempted to coerce me to give my DEED and TRUST to RICO defendant Mellon Bank with threats of incompetency and contempt of court. Now, the Third Circuit claims that Judges Watson and Zavarella are protected by Judicial Immunity.

INCREDIBLE !!

The RICO enterprise has been at work about 6 years in depleting my parents' estate of $27,000 and is now trying to steal my house. The Supreme Court can still act to reverse the damage to my parents' estate. However, for some of the elderly Orphans' Court victims and family, such as Bill Gallagher and Lew Birmingham, it is too late to reverse the damage of the RICO enterprise.

This Court should grant the writ of certiorari to review the judgment below and uphold the precedent that judges do not have absolute judicial immunity under RICO, and hold that state probate courts may be RICO enterprises and that state probate judges are liable to the elderly and families for damages to their estates caused by UNLAWFUL judicial acts under 18 U.S.C. §§ 1961 et. seq.

III. The Decision Below Contradicts ALL Precedent set by the U.S. Supreme Court, Courts of Appeals, and Federal District Courts that DENY the Right of Trial by Jury for REDRESS to recover damages to property as guaranteed by the Seventh Amendment and under RICO 18 U.S.C. § 1964(c).

In the instant case the right of redress by a jury trial was denied contrary to the U.S. Constitution, legislative law, and case precedents.

The U.S. Supreme Court has upheld the Right of Trial by jury under RICO 18 U.S.C. §1961 et seq., including 18 U.S.C. § 1964(c). Under RICO the right of trial by jury has long been preserved, motions to dismiss have been denied, and a trial occurred. In NSC Intern. Corp. v. Ryan, 531 F.Supp. 362 (D.C. Ill. 1981) precedence for a jury trial on demand for proceeding under 1964(c) was established:

> "Action seeking treble damages under statute creating a civil remedy for persons injured by violations of Racketeering and Corrupt Organizations Act was legal in nature and therefore the Seventh Amendment required jury trial on demand, 18 U.S.C.A. § 1964(c); Const. Amend. 7."

In later RICO cases occurring within the Western District of Pa., the District Court judges' decisions are in conflict with each other in regard to Motions to Dismiss a RICO complaint. In

Hurst v. Sears Roebuck & Co., 613 F.Supp. 1211 (W.D. Pa. 1985) Judge Weber of the Western District Court of Pennsylvania DENIED defendants' Motion to Dismiss and allowed the broad scope of federal discovery to collect necessary details and proceed in the usual fashion. Judge Weber's decision is in direct conflict to my case wherein Pennsylvania Western District Court Judge Bloch dismissed my RICO complaint without discovery and to proceed to a trial by jury.

Also in conflict with Judge Bloch's decision is the decision of Judge McCune (who recused himself in my case) which DENIED defendant's motion to dismiss a RICO claim and the district court allowed discovery in Commonwealth of Pennsylvania v. Derry Construction Company, 617 F.Supp 940 (D.C. Pa 1985).

The Third Circuit affirmed the District Court dismissal of my RICO complaint for failure to state a claim upon which relief can be granted (App. 4), which in itself conflicts with the district court decision to dismiss my RICO complaint as frivolous (App. 29). *Even the District and Third Circuit can not agree on the grounds for dismissal!*

Further, the Third Circuit knows that the existence of both pattern of racketeering activities and the RICO enterprise are issues for proof at trial and not bases for pretrial dismissal. U.S. v. Shakur, 560 F.Supp. 347 (D.C.N.Y. 1983). In United States v. Friedman, 854 F.2d 535 (2nd Cir. 1988) public officials were convicted under RICO in operating the New York City Parking Violations Bureau (PVB) for racketeering. The Second Circuit held:

> "But the JURY in this case found that the PVB was also used to collect bribes and kickbacks and had become a cesspool of corruption."

Precedence is extensive in RICO cases against the dismissal of a complaint and for the right to trial by jury.

This Court should grant the writ of certiorari to review the judgment below and uphold the precedent of (1) right of redress with a jury trial pursuant to 18 U.S.C. § 1964(c), (2) not dismissing a RICO complaint without discovery, and (3) proof of RICO issues to be determined at a jury trial and not a basis for pretrial dismissal.

CONCLUSION

The conclusion simply is that the American Judicial System is corrupt from the lower state courts all the way to the U.S. Third Circuit Court of Appeals. The Constitution is continually being ignored

and trial by jury does not exist for the common person.

The PHYSICAL abuse of the elderly is rising nationally and the attendant LEGAL abuse caused by corruption in the courts with judges, lawyers, banks, nursing homes, and designing persons cashing in on the homes and estates of the elderly is rampant.

America is no different than China or Russia except that we are deprived of our freedoms under the color of state law and the illusion of obtaining justice in the courtroom instead of being deprived of life and property by a gun. Threats of civil contempt of court, jail or a psychiatric hospital are used instead of a gun. The right of redress for damages from a "mugging" in the courtroom does not exist.

It is a sad day for America.

APPENDIX

APPENDIX

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

June 19, 1989

Re: Ruth E. Prevenslik, etc.
v. Elmer Rossko, et al.
No. A-944

Dear Ms. Prevenslik:

The Court today entered the following order in the above-entitled case:

"The application for stay addressed to Justice Kennedy and referred to the Court is denied."

Very truly yours,

JOSEPH F. SPANIOL, JR.,
Clerk

By

/s/ Francis J. Lorson
Chief Deputy Clerk

App. 2

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

May 29, 1989

Re: Ruth E. Prevenslik, etc
v. Elmer Rossko, et al.
Application No. A-944

Dear Ms. Prevenslik:

The application for a stay and other relief pending the timely filing and disposition of a petition for writ of certiorari in the above-entitled case has been presented to Justice Brennan, who on May 29, 1989 endorsed thereon the following:

"Denied
Wm. J. Brennan, Jr.
5/29/89"

Very truly yours,

JOSEPH F. SPANIOL, JR.,
Clerk

By

/s/ Edward L. Turner, Jr.
Assistant Clerk

App. 3

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 88-3843

RUTH E. PREVENSLIK, Individually
and as Trustee of the
Felix and Olga Davis Trust

vs.

ELMER ROSSKO, HENRY G. BEAMER, ESQ.,
METZ, COOK, HANNA, WELSH,
BLUESTONE AND BEAMER,
J. WARREN WATSON, Individually
and in capacity as Orphans' Court
Judge of Allegheny County,
MELLON BANK, N.A.
PAUL R. ZAVARELLA, Individually
and in capacity as Orphans' Court
Judge of Allegheny County

Ruth E. Prevenslik,
Individually and as
Trustee,

Appellant

On Appeal From the United States District Court For the Western District of Pennsylvania (Pittsburgh)
(D.C. Civil Action No. 87-352)
District Judge: Honorable Alan N. Bloch

Submitted April 20, 1989
BEFORE: STAPLETON, GREENBERG and SCIRICA
Circuit Judges

JUDGMENT ORDER

The Court having concluded that the complaint fails to state a claim upon which relief can be granted (1) under RICO, (2) under 42 U.S.C. § 1985, (3) under 42 U.S.C. § 1983 against the private defendants, and (4) under 42 § U.S.C. § 1983 against Judges Watson and Zavarella for injunctive relief, and that Judges Watson and Zavarella are entitled to absolute immunity from damages under § 1983.

IT IS ORDERED AND ADJUDGED that the judgment of the district court be and is hereby affirmed.

Judges Stapleton, Greenberg and Scirica have each declined to recuse themselves.

Costs taxed against appellant.

By the Court,

/s/ Walter K. Stapleton
Circuit Judge

Dated: May 9, 1989

Costs taxed in favor of Mellon Bank, N.A. as follows:
BRIEF.....$181.65
Costs taxed in favor of Elmer Rossko et al as follows:
BRIEF.....$105.88

App. 6

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

RUTH E. PREVENSLIK
vs. C.A. No. 88-3843
ELMER ROSSKO, ET AL.

(W.D. Pa. Civ. No. 87-0352)

Present: SLOVITER, MANSMANN and SCIRICA,
CIRCUIT JUDGES

Submitted are:

(1) Appellant's Petition for Recusal of Judges Mansmann and Sloviter with Motion to Vacate the Judgment by Mansmann and Sloviter and Grant Appellant's Motion for Emergency Injunctive Relief; and

(2) Appellant's Motion for Withdrawal of Reed Smith as Counsel for Defendant Mellon Bank

in the above captioned case.

The foregoing motion to vacate the judgment is denied; the motion for withdrawal of Reed Smith is denied; Judges Sloviter, Mansmann and Scirica have each declined to recuse themselves.

DATED: March 22, 1989

By the Court,

/s/ D. K. Sloviter,
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RUTH E. PREVENSLIK, Individually and as Trustee of the Felix and Olga Davis Trust, Plaintiff, v.	)	Civil Action
ELMER ROSSKO: HENRY G. BEAMER, ESQ. METZ, COOK HANNA, WELSH, BLUESTONE and BEAMER, J. WARREN WATSON, Individually and in capacity as Orphans Court Judge of Allegheny County, MELLON BANK, N.A. PAUL R. ZAVARELLA, Individually and in capacity as Orphans Court Judge of Allegheny County, Defendants.	)	No. 87-0352

Memorandum Order

Plaintiff's complaint was referred to United States Magistrate Gary L. Lancaster in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1) and Rules 3 and 4 of the Local Rules for Magistrates.

On November 30, 1988, the Magistrate filed his Report and Recommendation, which concluded that the complaint should be dismissed. Objections to the Magistrate's Report and Recommendation were filed by Plaintiff on December 5, 1988. After de novo review of the pleadings and documents in the case, together with the Report and Recommendation and objections thereto, the following order is entered this 19th day of December, 1988:

IT IS HEREBY ORDERED that the complaint be dismissed.

The Report and Recommendation filed by Magistrate Lancaster is adopted as the Opinion of the Court.

/s/ Alan N. Bloch

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RUTH E. PREVENSLIK, Individually and as Trustee of the Felix and Olga Davis Trust, Plaintiff,	)	Civil Action
v.	)	
ELMER ROSSKO: HENRY G. BEAMER, ESQ. METZ, COOK HANNA, WELSH, BLUESTONE and BEAMER, J. WARREN WATSON, Individually and in capacity as Orphans Court Judge of Allegheny County, MELLON BANK, N.A. PAUL R. ZAVARELLA, Individually and in capacity as Orphans Court Judge of Allegheny County, Defendants.	)	No. 87-0352

MAGISTRATE'S REPORT AND RECOMMENDATION

GARY L. LANCASTER, U.S. Magistrate

Plaintiff filed this civil action, pro se pursuant to the Civil Rights Act of 1871, 42 U.S.C. §§ 1983, 1985 and the Federal Racketeer Influenced and Corrupt

Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968. All Defendants have moved, pursuant to Fed.R.Civ.P. 12(b)6, to dismiss the complaint for failure to state a claim for which relief can be granted. For the reasons set forth below, the motions should be granted.

I. Background

Plaintiff's pro se complaint is inartfully drawn and is, for the most part, incomprehensible. However, viewed generously, the following material events appear to be the predicate for the claim: Plaintiff is the natural daughter of Felix and Olga Davis. On December 31, 1982, Mr. and Mrs. Davis executed a trust agreement in which they placed certain monies in trust and named Plaintiff as the sole trustee of the fund. Additionally, on September 17, 1982,

Mr. and Mrs. Davis executed a deed transferring to Plaintiff title to their real estate located at 2081 Kindren Drive, Wilkinsburg, Pennsylvania. Thereafter Defendant, Elmer Rossko, brother of Mrs. Davis, filed a petition in the Court of Common Pleas of Allegheny County, Pennsylvania, averring that both Olga and Felix Davis were incompetent and were likely to become the victims of designing person, specifically Plaintiff.

The case was assigned to Defendant Judge Warren J. Watson of the orphans' court division. Judge Watson conducted a number of hearings on the matter at the conclusion of which he determined that Mr. and Mrs. Davis were incompetent, and appointed Defendant Mellon Bank, N.A. as the guardian of their estates. Thereafter, Mellon Bank, through its

counsel defendant Henry G. Beamer, Esquire, filed a petition with the Orphans Court seeking to: 1) remove Plaintiff as trustee of the trust fund; 2) require Plaintiff to turn over the assets of the trust fund to Mellon Bank after an accounting; and 3) void the deed transferring the Wilkinsburg property from the Davises to Plaintiff.

Footnote 1. Mr. Davis has subsequently died, however, his death does not impact the resolution of this case.

After a number of hearings on Mellon Bank's petition, the Court agreed with Mellon Bank and entered a decree nisi directing that: 1) the deed from the Davises to Plaintiff dated September 17, 1982, was null and void; 2) the trust agreement dated December 31, 1982, was null and void; 3) Plaintiff file an account of the trust monies in her

possession and turn over any remaining monies to Mellon Bank; and 4) all costs to be paid by the plaintiff.

Thereafter, Plaintiff filed the instant action in which, she contends that Judge Watson's decision and the facts and circumstances leading to those decisions deprived her of the disputed property without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution. Plaintiff seeks damages in excess of $10,000 and certain equitable relief.

Footnote 2. Also named as defendants are Common Pleas Court Judge Paul R. Zavarella, (who entered an ancillary order pertaining to the matter; and Mr. Beamer's law firm, Metz Cook, Hanna, Welsh, Bluestone and Beamer.

II. Standard of Review

In reviewing a motion to dismiss a complaint pursuant to Fed.R.Civ.P.

12(b)(6) the Court must accept, as true, all well-pleaded allegation made by the Plaintiff. Hochman v. Board of Education of Newark, 534 F.2d 1094 (3d Cir. 1976); Colburn v. Upper Darby Township, 838 F.2d (3d Cir. 1988). Moreover a pro se complaint must be liberally construed, and can only be dismissed for failure to state a claim "... if it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Haines v. Kerner, 404 U.S. 519 (1972). With these concepts in mind, we turn to the merits of Defendant's motions.

III. Discussion

A. 42 U.S.C. § 1983 - Judge Warren Watson and Judge Paul Zavarella

In order to recover in a section

1983 action, a plaintiff must prove two essential elements: 1) that the defendants deprived him of a right secured by the Constitution and laws of the United States; and 2) that the defendants deprived him of this constitutional right "under color of any statute, ordinance, regulation, custom, or usage of any state or territory." Adickes v. S.H. Kress & Co, 398 U.S. 144, 150 (1970).

Although section 1983 does not expressly allow for immunities, in Stump v. Sparkman, 435 U.S. 349 (1978), the Supreme Court held that a judge is absolutely immune from money damages in section 1983 actions that challenge his judicial acts. A judicial act is an act normally performed by a judge, and where the parties dealt with the judge in his

judicial capacity. ID. at 362. The immunity adheres even if the judge acted with partiality, maliciously or corruptly. Pierson v. Ray, 386 U.S. 547, 554 (1967), or in furtherance of a conspiracy. Dennis v. Sparks, 449 U.S. 24, 26 (1980). See also Humphrey v. Court of Common Pleas of York County, 640 F.Supp. 1239 (M.D. Pa. 1986). When judicial immunity is an issue, the scope of the judge's jurisdiction must be construed broadly, Stump v. Sparkman, 435 U.S. at 356; and a judge will be subject to liability only when he has acted in the clear absence of all jurisdiction." Id. at 356-57.

If we allow that Judges Watson and Zavarella committed errors of law in deciding the case, they were nevertheless, acting within their

judicial capacity. Accordingly, even with a generous reading of the complaint, it is apparent that Plaintiff is attempting to hold these judges civilly liable for performing judicial acts. Defendants are immune from such liability.

However judicial immunity is limited to section 1983 claims seeking money damages. Pulliam v. Allen, 466 U.S. 522 (1984). Plaintiff also seeks prospective injunctive relief. In order to prevail on the claim for injunctive relief, Plaintiff must demonstrate that there is an actual case or controversy, i.e., that she is in immediate danger of sustaining some direct injury. Fed.R.Civ.P. Rule 60. The threat of the injury must be real, not conjectural or hypothetical. Past illegal conduct does not show a

present case of controversy sufficient for injunctive relief. Los Angeles v. Lyons, 461 U.S. 95. 102 (1983). In this case Plaintiff seeks an injunction precluding the "... incarceration of the Plaintiff pending removal of the Common Pleas action to this Court." Since there is no basis in law for putting her in jail. we conclude that this is not a real threat. Thus , prospective injunctive relief is not appropriate here. Therefore, the section 1983 claim against Judge Watson and Zavarella should be dismissed.

B. 42 U.S.C. §1983 - All Other Defendants

The remaining Defendants are either individuals or privately owned businesses. None act under color of state law. The law is well settled that private citizens can not be sued under

section 1983 for non-state related activities. Smith v. Duquesne University, 612 F.Supp. 72, 75-76 (W.D. Pa. 1985), aff'd 787 F.2d 583 (3d Cir. 1986) (citing Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982)); Carter v. Ingalls, 576 F.Supp 834 (S.D. Ga. 1983). The exception to this is that section 1983 liability may be imposed against non-government parties if tho;se parties conspired with government officers. Adickes v. S.H. Kress & Co., 398 U.S. at 152. If we allow that Plaintiff has set forth sufficient facts to allege a conspiracy between these Defendants and Judges Watson and Zavarella-- a proposition which is by no means secure, Diulus v. Churchill Valley Country Club, 601 F.Supp 677, 679 (W.D. Pa. 1985) (The pleading must "specifically present facts

tending to show an agreement and concerted action"_ -- we nevertheless find the Plaintiff's claim insufficient.

The gravamen of Plaintiff's due process claim is that Judge Watson determined that her parents were incompetent, then removed her as trustee of her parents' trust and vacated her title to the Wilkinsburg property. According to Plaintiff, all of this was done in violation of Pennsylvania procedural and substantive law. The other Defendants, in their respective roles, participated in the court proceedings which resulted in the allegedly errant decisions. However, it has long been settled that due process is not offended because a state court erroneously applies state law. Central Land Co. v. Laidley, 159 U.S. 103, 112

(1985) ("when the parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of the state court, does not deprive the unsuccessful party of his property without due process of law"); see also, Gryger v. Burke, 334 U.S. 728 (1948); Seattle R. & S. R. Co. v. Washington, 231 U.S. 568 (1913).

Further, in reviewing a claim alleging a violation of procedural due process, "it is not the deprivation of property ... that is unconstitutional; it is the deprivation of property ... without due process of law -- without adequate procedures." Daniels v. Williams, 474 U.S. 327, 339 (1986) (Stevens, J., concurring in judgment).

In reviewing a motion for dismissal under 12 (b)(6), we must accept as true

all of Plaintiff's well pleaded factual allegation; however, we need not accept Plaintiff's conclusion of law. Plaintiff's complaint, on its face shown that Judge Watson's decision resulted after several hearings, at which she had a full opportunity to present witnesses and evidence on her behalf and to cross examine opposing witnesses. The judgment was reviewable by the Pennsylvania appellant courts. Additionally, at all times throughout the state procedures, Plaintiff was represented by incompetent legal counsel. Thus even if the Defendants participated in a judicial proceeding which resulted in the loss of "her property," it was not accomplished without due process of law.

C. 42 U.S.C. § 1985

Plaintiff's complaint does not specify

what subsection of section 1985 she is proceeding under. However, view in her pro se complaint liberally, the only subsection which could remotely apply to the facts of this case is subsection (3).

The requirements for a cause of action under section 1985(3) are: 1) a conspiracy to violate Plaintiff's constitutional rights; and 2) racial or some other type of class-based discrimination. Griffin v. Breckenridge, 403 U.S. 88 (1971); Jennings v. Shuman, 567 F.2d 1213 (3d Cir. 1977). Plaintiff has not plead, nor does she contend in any of the documents submitted for the court's review, that she is a member of a racial or other suspect class historically subject to invidious discrimination. Accordingly, because the second element necessary to establish a

claim under section 1983(3) is lacking, the claim should be dismissed.

D. RICO

Section 1962 of the Act makes it a violation for

> any person through a pattern of racketeering activity ... to acquire or maintain, directly or indirectly, any interest in or control on any enterprise which is engaged, or the activities or which effect, interstate or foreign commerce.

18 U.S.C. § 1962. See Fiore v. Kelly Run Sanitation, Inc., 609 F.Supp 909, 916-17 (W.D. Pa. 1985) (listing seven elements of a section 1962 cause of action).

RICO was enacted by Congress to provide law enforcement authorities with an additional tool to reach and preclude organized crime from infiltrating legitimate business interests. See generally United States v. Vignola, 464 F.Supp. 1091 (E.D. Pa. 1979), aff'd, 605

F.2d 1199 (3d Cir. 1979), cert. denied, 444 U.S. 1072 (1980). Congress also created a civil action for damages for violation of RICO. Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479 (1985); 18 U.S.C. § 1964.

However, in this case Plaintiff has failed to allege even the basic elements of a RICO claim. Moreover, RICO is totally inapposite to the facts alleged. Therefore, the RICO claim should be dismissed as frivolous.

Although generally, frivolous is applied to cases proceeding in forma pauperis under section 1915(a),

Footnote 3. Plaintiff's request to proceed in forma pauperis was denied, Bloch J.
"(t)he law no more permits affluent persons to file frivolous actions that persons proceeding in forma pauperis." Lyszaj v. American Tel. & Tel., 559

F.Supp 51, 52 (E.D Va. 1983), aff'd, 720 F.2d 672 (4th Cir. 1983). Accord Southpark Square Ltd. v. City of Jackson, Miss., 565 F.2d 338 (5th Cir. 1977), cert. denied, 436 U.S. 946 (1978) (claim was so wholly insubstantial and frivolous that district court lacked federal question jurisdiction).

While the courts have failed to develop a uniform definition of "frivolous," "most courts require that a complaint state a colorable legal argument." Dreibelbis v. Marks, 675 F.2d 579, 580 (3d Cir. 1982) (citing cases). However, the standard for dismissal as frivolous is not the same as that applicable to dismissal under Fed.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief may be granted. The concept of frivolous

"embraces cases beyond credulity or possessed of little promise of success on the merits." and is designed to relieve the courts of cases in which the plaintiff's "realistic chances of ultimate success are slight." Clark v. Zimmerman, 394 F.Supp 1166, 1178 (M.D. Pa. 1975) Accord James v. Alfred, 835 F.2d 605, 606 n.1 (5th Cir. 1988), cert. denied, 108 S.Ct. 1599 (1988); Pennebaker v. Chamber, 437 F.2d 66 (3d Cir. 1971); and Isenberg v. Prasse, 433 F.2d 449 (3d Cir. 1970).

Finally, in determining whether a claim is frivolous or malicious, it is not merely a question of whether the Plaintiff uses the appropriate conclusory words of constitutional deprivation, but the court must take into account:

> the circumstances and history that surrounds the filing, the

tone of the allegations, and whether probative facts vital to the life of the lawsuit have been alleged. If the judge,considering the totality of the writing is convinced ... that the action is 'frivolous or malicious' then the judge should ... retain the broad discretionary power to dismiss the claim.'

Spencer v. Rhodes, 656 F.Supp 458, 463 (E.D. N.C. 1987), aff'd, 826 F.2d 1061 (4th Cir. 1987).

In light of the above-stated principle, we have no difficulty in concluding that Plaintiff's RICO claim is frivolous. Even viewed in the light most favorable to her, it is apparent that Plaintiff is simply asserting the RICO statute as another collateral attack on the validity of the orphans' court decision. That is not the purpose of RICO. Further, that Plaintiff's realistic chance of demonstration that the

Defendants' respective roles in the orphans' court case could constitute "racketeering activity" is "beyond credulity." Clark, 394 F.Supp at 1178. Plaintiff's RICO claim is frivolous and should be dismissed.

IV. Conclusion

Plaintiff's section 1983 claim should be dismissed for failure to state a claim for which relief can be granted, and her RICO claim should be dismissed as frivolous.

In accordance with the Magistrate's Act, 28 U.S.C. § 636 (b)(1)(B) and (C), and Rule 4 of the Local Rules for Magistrate the parties are allowed ten days from the date of service to file objection to this report and recommendation.

/s/ Gary L. Lancaster
United States Magistrate

Dated: November 30, 1988

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

RUTH E. PREVENSLIK, et. al.	)	
	)	
Plaintiff,	)	Civil
	)	Action
vs.	)	
	)	No.
ELMER ROSSKO: HENRY BEAMER, ESQUIRE, et.al.,	)	87-352
	)	
Defendants.	)	

ORDER

AND NOW, this 23rd day of July, 1987, upon consideration of Plaintiff's Motions for Order Compelling Discovery filed in the above captioned matter on July 21, 1987, It is ORDERED that said Motions are DENIED.

/s/ Alan N. Bloch
United States
District Judge